

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

In re:

ROBERT MICHAEL ARDIS,

Debtor.

CASE NO.: 16-30618-KKS
CHAPTER: 13

**ORDER DENYING VERFIED MOTION FOR REHEARING AND MOTION
TO REINSTATE CHAPTER 13 CASE, AND MOTION FOR ADDITIONAL
RELIEF (ECF 142)**

THIS CASE is before the Court upon the self-represented Debtor's *Verified Motion for Rehearing and Motion to Reinstate Chapter 13 Case, and Motion for Additional Relief* (the "Motion," ECF 142), and the Chapter 13 Trustee's Objection (ECF 147). For a variety of reasons, the Motion is due to be denied.

The Motion seeks more than one type of relief, in violation of
Local Bankruptcy Rule 7007-1.B.

Northern District of Florida Local Bankruptcy Rule 7007-1.B provides:

Each motion shall contain no more than one claim or request for relief unless the prayer is seeking alternative relief provided for in a single section of the Bankruptcy Code or Rules.¹

The Motion seeks more than one form of relief, not simply relief in the alternative. In the body of the Motion the Debtor states that he seeks the following relief: to "reinstate" his Chapter 13 case, a rehearing/reconsideration (presumably

¹ N.D. Fla. LBR 7007-1.B

of the order granting the Trustee's motion to dismiss with prejudice at ECF 127), to re-impose the "Automatic Stay," to disqualify attorneys, for "Bankruptcy Fraud," for "Timelines for United States Chapter 13 Trustee's Reporting Deadlines of Notification of Fraudulent Filings to the Appropriate United States Attorneys," and other unspecified relief.² In the Motion, the Debtor also again requests the undersigned's recusal or "disqualification," which relief has already been twice denied.³ Debtor's primary goal with the Motion appears to be reconsideration of the dismissal of this case with prejudice. The Court will address reconsideration and rehearing, and not the other relief the Debtor attempts to request.⁴

The Motion does not contain sufficient grounds for rehearing or reconsideration.

The Debtor does not state what rule of procedure forms the basis for the Motion. The only Federal Rules of Civil Procedure that may apply are Rule 59(e),

² ECF 142, at p. 2.

³ See *Order Denying Debtor's Verified Amended Motion for Disqualification or Recusal [of] Federal Bankruptcy Court [sic] Judge* (Doc. 124), ECF 125; *Order Denying Verified Second Amended Motion for Disqualification or Recusal [of] Federal Bankruptcy Court [sic] Judge and Motion for Other Relief* (Doc. 137), ECF 139. In the Motion the Debtor consistently refers to the undersigned as the "former" bankruptcy judge.

⁴ In the Motion and other pleadings he has filed in this Case, the Debtor reiterates that he is not an attorney and requests "the indulgence of the Court" in the review of his pleadings. This Court's consideration of the Motion as one for rehearing or reconsideration, demonstrates the Court's indulgence of the Debtor and his pleadings. This Debtor, as well as other self-represented parties, is reminded that, as one court has stated, "[c]ourts construe the pleadings of *pro se* litigants liberally. But this 'does not give a court license to serve as *de facto* counsel for a party ... or to rewrite an otherwise deficient pleading in order to sustain an action.'" *Smith v. Ocwen Financial*, 488 Fed.Appx. 426, 427 (11th Cir. 2012) (citing *GJR Inv., Inc. v. Cnty. Of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998) (citation omitted), *overruled on other grounds by Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010)).

which provides for altering or amending a judgment, and Rule 60(b), which provides for relief from a judgment or order. The Debtor has not stated sufficient grounds for relief under either of these rules.

Under Rule 59(e), as modified by Federal Rule of Bankruptcy Procedure 9023, “a motion for a new trial or to alter or amend a judgment shall be filed, and a court may on its own order a trial, no later than 14 days after entry of judgment.”⁵ The Debtor filed the Motion on November 29, 2016, fifteen (15) days after the Court entered its order dismissing the case.⁶ As the Trustee correctly points out in her Objection, if the Motion is construed as seeking relief under Rule 59(e), then the Motion was not filed timely.

Even ignoring the untimeliness of the Motion, the Debtor would still not be entitled to relief under Rule 59(e). The Eleventh Circuit Court of Appeals has held that the only grounds for granting a motion for reconsideration are newly-discovered evidence or manifest errors of law or fact.⁷ In denying a Rule 59(e) motion, one district court recently stated that to justify altering or amending a judgment on the basis that there has been a manifest error of law, “the prior judgment cannot be ‘just maybe or probably wrong; it must . . . strike [the court] as wrong with the force of a

⁵ Fed. R. Bank. R. 9023.

⁶ See *Order Granting Chapter 13 Trustee’s Amended Motion to Dismiss with Prejudice (Doc. 100)*, ECF 127

⁷ See *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007).

five-week-old, unrefrigerated dead fish.”⁸ A factually supported and legally justified decision, such as this Court’s dismissal of the Debtor’s Chapter 13 with prejudice, does not constitute clear error.⁹ Nothing the Debtor cites in his Motion rises to the level of newly discovered evidence or manifest error of law. Rather, the Debtor recites facts and history of this case well-known to the Court and other parties, and attempts to re-argue his previously argued positions.

The Debtor has also not stated grounds for relief under Rule 60(b), which provides:

On motion and just terms, the court may relieve a part or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.¹⁰

⁸ *Fontell v. Hassett*, 891 F. Supp. 2d 739, 741 (D. Md. 2012) (alteration in original) (quoting *TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009)).

⁹ *Sher v. RBC Capital Markets, LLC* 1:11-cv-01998-GLR, 2016 WL 4919271 at *1 (D. Md. Sept. 14, 2016).

¹⁰ Fed. R. Civ. P. 60(b).

Rather than asserting any of the stated grounds for relief, the Debtor first alleges that he did not want to file bankruptcy, that his goal has been to work out a mortgage mediation, and that that he has “diligently undertaken” efforts to mediate the mortgage on his homestead. The record reflects the latter statement to be inaccurate. The Debtor filed a motion seeking Mortgage Modification Mediation (“MMM”) very late in this case.¹¹ Despite that timing, the Court entered an MMM order.¹² By the date of the hearing on the Trustee’s motion to dismiss, the Debtor was in violation of the MMM order and other orders of this Court by not having filed a proper Chapter 13 plan, by having failed to make any plan payments, and by having failed to file certain required documents or provide them to the Chapter 13 Trustee.

The Debtor next complains of the lawyers for U.S. Bank Home Mortgage, apparently in an attempt to put the blame on them for not having been able to restructure the mortgage on his homestead. In this portion of his Motion, the Debtor suggests that these attorneys have violated the law, perpetrated a fraud on the Court, and been unethical.¹³ Even if true, these allegations are irrelevant to whether the Court should grant Debtor’s Motion and reverse the dismissal of this case with prejudice. Even if true, these allegations fail to explain or provide any legitimate

¹¹ See *Emergency Motion for Referral to Mortgage Modification Mediation*, ECF 82.

¹² See *Order Granting Amended Motion for Referral to Mortgage Modification Mediation*, ECF 104.

¹³ ECF 142 at pp. 4-5.

excuse for Debtor's own failures to comply with the Court's orders, the MMM procedures and the Bankruptcy Code.

In the Motion, Debtor again attempts to convince this Court to look behind the final judgment of foreclosure and other orders entered by the state court, as well as to "undo" the foreclosure sale conducted pursuant to those orders, on the basis of his complaints about U.S. Bank Home Mortgage's various law firms.¹⁴ This Court has denied such relief in this case multiple times. As the Court has pointed out to Debtor repeatedly, bankruptcy courts are not to act as, in essence, super appellate courts, for purposes of reviewing and, as Debtor suggests, undoing, orders entered in other courts of competent jurisdiction. The Rooker-Feldman doctrine mandates federal courts, including bankruptcy courts, to accept as binding an order or judgment entered by a state court of competent jurisdiction.¹⁵ As stated by the Supreme Court, lower federal courts possess no power whatever to sit in direct review of state court decisions.¹⁶ This Court is also bound by principles of comity, which require federal courts "to show: a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continue of the belief that the National Government will fare

¹⁴ *Id.*

¹⁵ See *In re Wilson*, 116 F.3d 87, 90 (3d Cir. 1997) ("The bankruptcy court is also prohibited from reviewing the state court's judgment by the *Rooker-Feldman* doctrine, which prohibits lower federal courts from sitting as effective courts of appeal for state court judgments.").

¹⁶ *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983).

best if the States and their institutions are left free to perform their separate functions in their separate ways.”¹⁷

The Debtor blames the Chapter 13 Trustee and her attorney for the dismissal of this case with prejudice. He claims that they have treated him inappropriately and have failed to take certain actions to investigate the alleged fraud the Debtor asserts was perpetrated by attorneys for U. S. Bank. Once again, even if this were true it would not be sufficient on which to reverse the dismissal of this case with prejudice. Such actions or inaction by a Trustee or her counsel, if they occurred, would not excuse a debtor’s failure to comply with court orders, the Bankruptcy Code and Bankruptcy Rules. A Chapter 13 Trustee cannot, and of course should not, make a debtor’s Chapter 13 plan payments, file a debtor’s income tax returns, prepare a proper Chapter 13 plan for a debtor, or assist a debtor in attempting a mortgage modification mediation.

The Debtor claims that he was prejudiced when his request for a continuance of the final hearing was denied. This claim is without merit. While it is true that the Chapter 13 Trustee served a proposed statement of undisputed facts and other pleadings via email shortly prior to the hearing, this caused no prejudice because the Debtor does not, and did not at the hearing, dispute any facts set forth by the Trustee. Further, most, if not all, of the facts contained in the Trustee’s statement of facts are

¹⁷ *Younger v. Harris*, 401 U.S. 37, 44, 91 S.Ct. 746, 750(1971).

a matter of record either in this case or in Debtor's prior bankruptcy cases. These facts include:

- The Debtor filed Case No. 15-30264 on March 12, 2015.¹⁸ A Motion to Dismiss was filed on March 31, 2015, for failure to file a Chapter 13 Plan and Schedules with this Court, failure to provide copies of the Debtor's tax returns for the two (2) years preceding the date of filing, and failure to file a Certificate of Credit Counseling.¹⁹ An Order Dismissing Case was entered on May 27, 2015, prior to confirmation.²⁰ The Debtor made no payments in Case No. 15-30264 and the 341 Meeting of Creditors was not completed.
- The Debtor filed Case No. 16-30061 on March 25, 2016.²¹ A Motion to Dismiss was filed on February 11, 2016, for delinquent payments, failure to file a Chapter 13 Plan and Schedule J with this Court, failure to file a Certificate of Credit Counseling, and failure to pay filing fees due in Case No. 15-30264.²² An Order Dismissing Case was entered on March 24, 2016, prior to confirmation.²³ The Debtor made no payments in Case No. 16-30061 and the 341 Meeting of Creditors was not completed.
- The Debtor filed this Chapter 13 case on June 29, 2016.²⁴
- The Debtor has made no payments to date in this case.²⁵
- The Debtor failed to provide copies of tax returns for the two years preceding the date of filing to the Chapter 13 Trustee.
- The Debtor failed to file the required Chapter 13 Form Plan.²⁶

¹⁸ See Case No. 15-30264, ECF 1.

¹⁹ See Case No. 15-30264, ECF 15.

²⁰ See Case No. 15-30264, ECF 39.

²¹ See Case No. 16-30061, ECF 1.

²² See Case No. 16-30061, ECF 28.

²³ See Case No. 16-30061, ECF 66.

²⁴ See ECF 1.

²⁵ See ECF 108 at p. 15.

²⁶ See ECF 39.

- The Debtor failed to file the required Statement of Financial Affairs pursuant to an Order entered by this Court on July 14, 2016.²⁷

Giving the Debtor additional time within which to respond to the Trustee's proposed statement of undisputed facts by continuing the hearing would have simply prolonged the inevitable; none of the material facts underlying the dismissal of this Chapter 13 with prejudice would have changed.

Finally, the Debtor urges that notwithstanding his failure to abide by court orders and requirements of the Bankruptcy Code, and notwithstanding the dismissal of the instant case, this Court should enforce the MMM order entered prior to the final hearing.²⁸ Enforcing an order entered prior to dismissal of this case would be wholly inappropriate; especially since the dismissal was due, in part, to Debtor's failure to comply with the requirements of that very order.

The facts upon which this Court granted the Chapter 13 Trustee's motion to dismiss this case with prejudice have not changed. Although the Debtor urges that the sole purpose of filing this case was to save his home, his acts belie his words. As of the date of the final hearing, the Debtor had not: made a single Chapter 13 plan payment, filed a Chapter 13 Plan in proper form, filed a notice of adequate protection for the mortgage on his home, provided income tax returns to the Trustee, filed pay advices, or made a single adequate protection payment to U.S. Bank.

²⁷ See ECF 31.

²⁸ *Order Granting Amended Motion for Referral to Mortgage Modification Mediation*, ECF 104.

The fact that this case might be dismissed with prejudice could not have come as a surprise to the Debtor. A preliminary hearing on the Trustee's Motion to Dismiss was held on September 28, 2016. The Debtor appeared at that hearing, as did the Chapter 13 Trustee. At that hearing the Court made it abundantly clear what the Debtor needed to do in order to prevent dismissal of this case. Addressing the Debtor directly, the Court stated:

I think you and [I] have had this discussion before also, in order for a bankruptcy court, including myself, to give debtors what they want, the debtors have to follow the rules. You have to provide the tax return to the Chapter 13 Trustee. You have to file the plan in proper form. You have to start making plan payments when they are due, et cetera, et cetera. And, Mr. Ardis, I have bent over backwards so far for you in this case and in your prior case because I can only imagine what it feels like to be losing a home.²⁹

After that, the following exchange occurred between the Chapter 13 Trustee (Ms. Hart), the Debtor and the Court:

Ms. Hart: Your Honor, the only thing I wanted to point out to Mr. Ardis was he's required, notwithstanding that these [hearings] are continued, to make his plan payments, and he's already missed his July, August, September [plan payments], and we are coming up on this month again.

The Court: Mr. Ardis, Ms. Hart has reminded you that you are already due to make payments for July, August – is it September also, Ms. Hart?

²⁹ September 28, 2016 Hearing Tr. 25:7-19.

Ms. Hart: Yes, Your Honor.

The Court: -- and September under the Chapter 13 Bankruptcy Code requirements and this Court's court order.

Debtor Ardis: Do I need to send those [payments] to Ms. Hart?

The Court: You better do something, yes, sir. And you will find her information on the court docket as to where to send those payments. Is that correct, Ms. Hart?

Ms. Hart: Yes, that's correct, Your Honor. And we also send out to every debtor when they first file a letter telling you exactly where the payments go. But I will be happy to send another one, if you would like me to.

The Court: Ms. Hart's office will send you another letter giving you the exact address of where to send those payments.³⁰

The next day, the Trustee filed and sent the Debtor a notice again advising the Debtor where to send his plan payments.³¹ At the conclusion of the preliminary hearing, the Court announced that the final hearing on the Trustee's motion to dismiss this case with prejudice would take place on October 18, 2016.³²

³⁰ *Id.* at 27:6 – 28:7.

³¹ *Notice of Filing Chapter 13 Plan Payment Address and Information* (Doc. 92).

³² Other matters were also noticed to be heard on October 18, 2016, including: *Order to Show Cause Why Case should not be Dismissed for Debtor's Failure to Comply with Requirements of Section 521 of the Bankruptcy Code* (Doc. 54); *Debtor's Emergency Motion for Immediate Relief* (Doc. 103); *Debtor's Supplemental Emergency Motion for Immediate Relief* (Doc. 113); *Debtor's Emergency Motion to Cancel and/or Emergency Motion to Continue Hearing* (Doc. 117); and *Debtor's Emergency Objection to Trustee's Statement of Undisputed Facts* (Doc. 116). The Debtor filed the latter two motions the day before the hearing.

The evidence presented at the final hearing included testimony by the Debtor. Not even Debtor's testimony contradicted the fact that the Debtor was still not in compliance with the Bankruptcy Code, this Court's Standing Chapter 13 Order, or the Duties of the Debtor Order.

Bankruptcy Code Section 1308(a) requires debtors in Chapter 13 to provide the Chapter 13 trustee copies of income tax returns, if filed. If returns have not been filed, the § 341 meeting is to be continued to allow the debtor a period of time to file missing returns.³³ This Court's "Duties of the Debtor" Order, entered in this case at ECF 42, provides, in pertinent part:

- 5(a)(ii) – Pending confirmation of a plan... The Debtor shall: File Notice(s) of Adequate Protection Payments in accordance with this Court's Chapter 13 Standing Order and serve a copy on the Trustee and each affected creditor.
- 5(b) - The Debtor shall commence making payments to the Trustee as proposed by the plan or any amended plan within 30 days after the petition date unless otherwise ordered by the Court. **If the Trustee does not timely receive any payments, the case may be dismissed.**
- 10. The Debtor shall provide tax returns in accordance with the Chapter 13 Standing Order and shall submit that portion of any refund required by the plan to the Trustee unless ordered otherwise by the Court.

With respect to income tax returns, this Court's Chapter 13 Standing Order (SO 19) provides:

Pursuant to 11 U.S.C. §1308:

³³ 11 U.S.C. § 1308(b).

- a. **Pre-Petition Tax Returns** - The Debtor shall provide to the Chapter 13 Trustee their Federal income tax returns for all tax periods during the two (2) year period ending on the date of the filing of the Petition.

This Court's MMM Order³⁴ provides, in pertinent part:

22. Adequate Protection Payments in Chapter 12 and 13 Cases. In all cases, **a Debtor seeking MMM shall provide adequate protection to the Lender**. Unless otherwise ordered by the Court: (1) for homestead properties, the Debtor shall pay the lesser of (a) 31% of Debtor's gross disposable income (after deducting homeowner association fees), or (b) the normal monthly contractual mortgage payment;

28. Other Matters. The referral of a matter to MMM does not relieve the parties from complying with any other court orders, applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Administrative Orders, or Local Rules. Entry of an Order authorizing MMM shall not stay the Debtor's bankruptcy case.

Bankruptcy Code Section 1326(a)(1) provides that “unless ordered otherwise,” the debtor shall begin making plan payments within 30 days of the earlier of filing a plan or the order for relief. Section 109(g)(1) of the Code provides that no individual may be a debtor in a case if he/she failed to obey court orders. That section further provides that dismissal with prejudice for 180 days is mandatory if the debtor's case is dismissed by the court for a willful failure to abide by orders of the court. That is the case here.

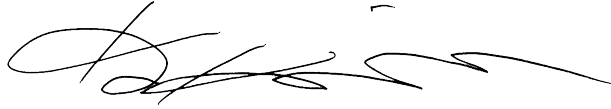
³⁴ See ECF 104 at ¶¶22, 28.

Nothing in Debtor's Motion justifies relief under either Rule 59(e) or Rule 60(b). The Debtor's requests for additional relief in the Motion are improper.

For the reasons stated, it is:

ORDERED that the Debtor's *Verified Motion for Rehearing and Motion to Reinstate Chapter 13 Case, and Motion for Additional Relief* (ECF 142), is DENIED.

DONE AND ORDERED on the 6th day of January, 2017 .

A handwritten signature in black ink, appearing to read 'K. Specie', written over a horizontal line.

KAREN K. SPECIE
United States Bankruptcy Judge

cc: All interested parties, including Debtor,
Robert Michael Ardis
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Pensacola, FL 32504